DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 05-0490
County Innkeeper's Tax
For 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. County Innkeeper's Tax

Authority: IC 6-2.5-2-1(b); IC 6-2.5-9-3; IC 6-9-18-3(a); IC 6-9-18-3(c) IC 6-9-18-3(e); 45 IAC 15-11-2(b).

Taxpayer argues that it should not be required to pay the County Innkeeper's Tax which it should have collected from its customers during 2002 because taxpayer was not aware that the tax had been adopted by Shelby County.

STATEMENT OF FACTS

Taxpayer is a hotel located in Shelby County Indiana. The hotel began operations on March 1, 2000.

Taxpayer failed to collect and remit the five percent Innkeeper's Tax from March 2, 2002, through September 30, 2002. The Department of Revenue (Department) conducted an investigation and prepared a report. The report stated that "[County Innkeeper's Tax] is now due in the amount of 5 [percent] of the gross lodging receipts for this period." As a result, the Department sent a notice of proposed assessment.

On the grounds that taxpayer was unaware of the Innkeeper's Tax and had not collected the tax from its customers during this period, taxpayer challenged the proposed assessment by filing a protest. An administrative hearing was conducted during which taxpayer explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. County Innkeeper's Tax

Taxpayer argues that it is not liable for the County Innkeeper's Tax which it should have collected during the seven-month period at issue because taxpayer was unaware that the tax had been imposed and because the tax had not been collected from taxpayer's customers.

IC 6-9-18-3(a) states that, "The fiscal body of a county may levy a tax on every person engaged in the business or renting or furnishing, for periods of less than thirty (30) days, any room or rooms,

lodgings, or accommodations in any (1) hotel; (2) motel . . . (4) inn . . . or (7) tourist cabin; located in the county." Id.

IC 6-9-18-3(c) sets the maximum rate that a county may set for this tax. "The tax may not exceed the rate of five percent (5 [percent]) on the gross retail income derived from lodging income only and is in addition to the state gross retail tax imposed under IC 6-2.5." Id.

IC 6-9-18-3(e) describes the manner, means, and responsibilities attendant on the collection of the County Innkeeper's Tax. "All the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions and administration are applicable to the imposition and administration of the tax imposed under this section . . . ." Id.

IC 6-9-18-3(e) incorporates by reference the gross retail (sales) tax provisions. Among those is IC 6-2.5-2-1(b) which states that, "The retail merchant shall collect the tax as agent for the state." Also incorporated is IC 6-2.5-9-3 which – in relevant part – states that the retail merchant (the innkeeper), "has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department; [and] holds those taxes in trust for the state and is *personally liable* for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." (*Emphasis added*).

Nonetheless, taxpayer maintains that it should not now be found liable for the Innkeeper's Tax because it was unaware the tax had been implemented in Shelby County and that taxpayer only became aware of the tax after a customer pointed out the discrepancy between the rates taxpayer charged and the rates charged by competitors. Taxpayer explained that he called his county treasurer's office which was – according to taxpayer – unaware that Shelby County had adopted this tax. Taxpayer also stated that – after having filled out "zero balance" vouchers for the seven-month period during 2002 – taxpayer heard nothing on the matter until contacted by the Department in 2005.

Essentially, taxpayer argues that it should not be required to pay the Innkeeper's Tax assessment because it did not collect the tax from its customers. In support of this argument, taxpayer presented copies of its financial records which showed that, although taxpayer collected the five percent state sales tax, it did not collect the Innkeeper's Tax from its customers.

The Department cannot explain why – according to taxpayer – the Shelby County Treasurer was unaware that its county had adopted this tax on February 2, 2002. Nevertheless, the Department is not in a position to abate the tax on the ground that taxpayer was unaware of its responsibility to collect and forward the tax to the state. Rather, the Department assumes that both individuals and businesses are aware of their tax responsibilities or will make themselves aware of those responsibilities. "Ignorance of the listed tax laws, rules and/or regulations is treated as negligence." 45 IAC 15-11-2(b). The Department does not believe that it is reasonable to assume that those persons or businesses which – for whatever reason – remain unaware of their tax responsibilities should be excused from collecting and remitting that tax.

The Department has no reason to doubt taxpayer's good faith or that taxpayer may have been confused as to the applicability of the County Innkeeper's Tax. There is no reason to believe that taxpayer *did* collect tax but then withheld payment to the state. However, the statutory provisions are clear; taxpayer had a duty to collect the tax as an agent for the state and to forward that tax to the

state. There is nothing in law or equity permitting the Department to abate this tax liability because taxpayer failed to collect the tax from its customers.

FINDING

Taxpayer's protest is respectfully denied.

DK/DP/JM – 060303